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June 25, 2014

**VIA ELECTRONIC FILING**

Hon. David E. Peebles  
United States Magistrate Judge  
Northern District of New York  
James M. Hanley Federal Building  
100 South Clinton Street  
Syracuse, New York 13261

Re: *33 Seminary LLC et al v. City of Binghamton et al.*,  
3:11-cv-1300 (MAD/DEP)

Dear Judge Peebles:

This firm represents Plaintiffs in the above-referenced matter. I am writing to provide Your Honor with an update on the status of discovery in advance of our telephone conference scheduled for Thursday, June 26, 2014. Specifically, there are three items that we would like to discuss with the Court: (1) the status of certain items of written discovery; (2) the depositions of Defendants Joann Mastronardi and Kevin Esworthy; and (3) expert disclosures.

**1. Written Discovery**

On May 5, 2014, Plaintiffs served Defendants with post-deposition demand for documents and a request for admissions. The document demands sought City records for any denied Special Use Permits/Series A Site Plan Review under Ordinance 009-009 between March 2009 and December 2010. On June 9, 2014, Defendants served a response to Plaintiffs' document demands claiming that Defendants "are in the process of compiling documents in their possession custody and control that are responsive to [the demands] which have not already been produced, and those documents will be disclosed in electronic format under separate cover." To date, Defendants have not served Plaintiffs with any documents responsive to this demand.

The request for admissions sought admissions as to the authenticity of audio files of certain city board meetings previously produced by Defendants in discovery and written transcripts of relevant portions of those audio files. Defendants object to the scope of the request

for admissions. Plaintiffs and Defendants have been working together to find a mutually agreeable solution to Defendants' objection.

## **2. Depositions**

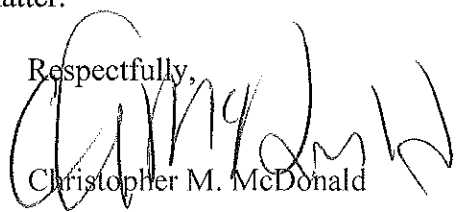
Today, Plaintiffs are serving Defendants with deposition notices for Joann Mastronardi and Kevin Esworthy that call for these two parties to be deposed on July 16, 2014 at my firm's office in Albany. Plaintiffs previously requested Ms. Mastronardi's deposition, but Defendants claimed that Ms. Mastronardi was unavailable due to a medical procedure. To the extent that Defendants may continue to take the position that Ms. Mastronardi should not be required to appear for a deposition, we would like to discuss this matter with the Court.

## **3. Expert Disclosure**

Plaintiffs are diligently working toward the production of an expert report. Due to scheduling conflicts with our proposed expert and previous delays in this case, however, we would ask for your approval of a slight change of scheduling with respect to the production of expert reports. Specifically, the parties have agreed, subject to the Court's consent, to extend Plaintiffs' expert disclosure deadline to July 31, 2014 and Defendants' expert disclosure deadline until September 15, 2014, with no corresponding extension of the overall discovery deadline, which would remain September 30, 2014.

Thank you for your consideration in this matter.

Respectfully,

  
Christopher M. McDonald